

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Skype Communications S.A.R.L.)	
Petition to Confirm A Consumer's Right)	RM-11361
To Use Internet Software and Attach)	
Devices to Wireless Networks)	
)	

**RESPONSE TO CELLULAR OPERATORS' COMMENTS
FROM MOBILE INDUSTRY EXECUTIVES***

Reading Verizon, T-Mobile, AT&T and other responses to the Skype petition has been a sad but predictable reminder of how mobile operators put consumers last. The vigor of their responses is the best indicator of how strongly they object to real market competition and removal of the regulatory protection they enjoy today. If the market were as competitive and innovative as the operators describe it, there would be no need for them to defend themselves so vigorously. If consumers were satisfied with their current mobile offering, operators would not view openness as such a big threat.

* We submit these comments in our individual capacities and not as the representatives or agents of any corporate entities. Ram Fish has been working in the cellular industry for the last ten years, most recently as CEO of Fonav Inc., which develops software for WiFi enabled handsets. He holds an MBA from Yale University and an MS in Computer Engineering from Case Western Reserve University. Jason Devitt has been the founder and CEO of two mobile data companies. The first, Vindigo, was one of the first companies in the US to publish content and applications for mobile phones, including mobile versions of Mapquest and the New York Times. His new company, Skydeck, is developing a range of mobile applications and services for consumers and small businesses.

In our initial comments, we argued that the Commission should confirm that Carterfone rules apply to the wireless industry, because doing so will cause no real harm to carriers and will greatly benefit consumers. It will foster innovation, increase the choice of handsets for consumers, lower prices, and lead to devices and services, most of which we cannot imagine today. We described several obvious possibilities, including solutions for first responders and for healthcare, and entertainment devices subsidized by content providers in exchange for subscriptions to content, or advertising revenue.

Our experience has been in developing handsets, applications and services for mobile devices. We are not lawyers. But many of the arguments raised against Skype's petition struck us as misleading or false. Others were “straw man” arguments that presumed a naive implementation of cellular Carterfone and criticized that implementation, rather than the actual proposal at issue.

We would like to outline the following two remedies, which deliver most of the benefits of Carterfone to the wireless market without introducing any of the problems that the carriers described:

1. The Commission should require each carrier to publish the existing CPE standards they use for certifying devices for use on their networks. Carriers must accept any CPE that meets those standards, and can reject any CPE that does not. Certifications will be handled by existing companies who specialize in handset certification.

2. The Commission should require each carrier to communicate to consumers what portion of their monthly bill is used to pay for service and what portion is used for the device. Furthermore, carriers should comply with Carterfone and offer a service-only plan.

These two remedies demand no new technology, are not expensive to implement, and are self-policing.

We will now consider some of the arguments raised against the Skype petition, in light of these two simple remedies.

The Competition Argument: *“The wireless market is highly competitive and no regulatory change is necessary.”* It seems to us that the operators often confuse a growing market with a competitive market. Yes, the market is competitive, but “A rising tide raises all boats.” In the last fifteen years there has been a spectacular growth in consumer demand for mobile communication. However, this phenomenal market growth does not indicate that the demand is fulfilled in the most efficient way.

As we pointed out in our initial comments, vertical integration causes structural problems in the wireless market that persist no matter how many competitors there are among operators. The most obvious example is that it is not possible to

bring a phone to market that can work across every wireless network without getting the permission of every network provider. Such a device would be extremely valuable to first responders and to law enforcement, as well as business people and anyone who travels. But without Carterfone, and in the current market, such a device is impossible.

The Impossibility Argument: *“Carterfone is impossible to implement, because there are multiple incompatible network technologies in the US.”* The remedy that we set out above - publish the existing standard used by each operator today as the basis for accepting or rejecting devices. The test and certification process exists today, and the documents that outline those tests and requirements can easily be provided by the operators to handset developers. There are companies that specialize in certifying and testing handsets and verifying compliance with such standards. So not only is it possible to implement Carterfone, it is also easy to do so.

The (No) Free Lunch Argument: *“Consumers want free subsidized phones and operators are giving it to them because devices and service are bundled.”* If this is truly the case, then operators should have no objection to a third party – who does not have the ability to bundle service – coming up with an attractive handset. And carriers should not object to letting users know how much they pay for service and how much for the handset “subsidy.” There can be nothing wrong

with disclosing this information to the end users and giving them a choice to use their own device and buy service only from the carrier.

The Nobody Does It Better Argument: *"Handsets must be fine-tuned to the network in order to optimize performance."* Professor Tim Wu has pointed out that the old AT&T made the same claim: "It takes one network to make it all work. Our network." Perhaps our PCs would all perform better if we were required to purchase them from AOL. But our consolation – to which consumers are entitled by law -- is the vast number of remarkable online services that have been able to enter the marketplace without AOL's permission. Carriers can continue to bundle and subsidize their own phones. If that truly makes for better service, consumers will continue to purchase phones from carriers, won't they?

The Chicken Little Argument: *"Carterfone will bring down our network."* All of the carriers now sell data cards based on an open standard that allow consumers to connect any computer to their networks. How can a phone pose a greater risk to the network than a personal computer?

The Flesh-Eating Wireless Virus Argument: *"Carterfone will expose us all to dangerous computer viruses."* If that were the case, shouldn't broadband providers control what software is installed on people's PC to protect us all from PC viruses? Under the proposed remedy, carriers can continue to offer their own handsets that claim to protect the consumer from any types of viruses. If the virus

threat is so important, consumer will value this claim and choose the operator's handset over third party handsets. So why are the carriers concerned?

Any phone that is capable of downloading and executing a third-party application is at risk of contracting a virus, whether that device is sold by a carrier or not. Any restrictions that the carrier wishes to impose on the functionality of phones in order to minimize the risk of viruses can be achieved through our proposed remedy of publicizing handset specifications.

The Bandwidth Hog Argument: *"We have to restrict what consumers can do because bandwidth is scarce."* The same argument was made by the broadband industry and rejected by the FCC. The result is a range of innovative consumer services.

No one is demanding that the carriers provide infinite bandwidth at zero cost. Carriers can and should charge for providing wireless access. The problem is that they advertise "unlimited" plans but in fact attempt to limit both the amount of bandwidth and the specific applications that consumers can use. Let the carriers sell and price connectivity for services. And let market pressure control the pricing. But carriers, like every other venture, should clearly and simply communicate their pricing plan. If a user is paying \$50/month, how much of it is for his "free" handset and how much for voice? If an operator is claiming

unlimited data, then it should be unlimited data. Not "limited unlimited." or "unlimited on sunny days."

The Vast Left Wing Conspiracy Argument: *"Those who support the petition want to strangle free enterprise in favor of a state-controlled wireless network."* As entrepreneurs, we smile whenever we hear these creatures of regulation preach the virtues of the free market. Personally, we favor open spectrum, software-defined radio, and dismantling the entire regulatory regime in favor of free markets. We say that if there must be rules, let the rules be the same for wireless and wireline communications. And if the goal of the Commission is to manage spectrum for the benefit of all, let us not manage spectrum for the exclusive benefit of incumbent carriers.

Respectfully submitted,

Ram Fish: _____/s/_____

Jason Devitt: _____/s/_____